

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

PIERCE COUNTY RECYCLING,
COMPOSTING AND DISPOSAL,
LLC, d/b/a LRI

Employer

and

Case 19-RC-14627

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
612, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

SUMMARY

The Employer is engaged in the business of operating a recycling and waste business in and about Pierce County, Washington. The Petitioner filed the instant petition seeking a unit of mechanics and shop technicians. At the hearing, the Petitioner amended its petition to seek a unit of four mechanics employed by the Employer and working at and/or out of three locations in or about Pierce County, Washington, as the Employer employs no employees in the classification of "shop technician."

The Employer and Petitioner raised three primary issues in this case. First, the Employer seeks to exclude, from the unit, one mechanic working at the Employer's Purdy facility because that mechanic allegedly does not share a sufficient community of interest with the Employer's other mechanics. Petitioner opposes the exclusion of the Purdy mechanic. Secondly, Petitioner seeks to exclude Richard Brain, who occupies the

¹ The Employer and Petitioner timely filed briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

position of leadman mechanic, from the unit because he assertedly possesses indicia of supervisory authority as that term is defined by Section 2(11) of the Act. The Employer maintains that Brain should be included in the unit as he does not possess indicia of supervisory authority. Finally, Petitioner seeks to exclude two mechanics recently hired by the Employer because the recent hires allegedly represent an attempt by the Employer to “pad” the list of eligible voters for an election in this case. The Employer has not taken a position on this third issue.

In short, I find a unit of all full-time and regular part-time mechanics employed by the Employer to be an appropriate unit and that the issue of Brain’s status shall be handled by the challenged ballot process. In particular, I find that the Purdy mechanic shares a sufficient community of interest with the other employees warranting his inclusion in the unit of mechanics. With respect to Brain, I find that the record raises substantial issues as to his supervisory status that cannot be resolved based on the limited record evidence. Therefore, I shall permit Brain to vote subject to challenge. With respect to the final issue, I find that the two recent hires should be included in the unit and permitted to vote subject to the eligibility requirements applicable to all unit employees.

Below, I have set forth the evidence presented during the hearing. Also set forth below is my analysis of the applicable legal standards, my conclusion, and my Decision and Direction of Election.

I. RECORD EVIDENCE

A. Background Information

The Employer is engaged in the operation of a recycling and waste business in and about Pierce County, Washington. The Employer’s operations consist of landfills (both closed and open),³ composting factories, recycling centers, drop box (garbage containers) locations, rail loading of waste, and the retail sale of landscaping products.⁴ These operations occur at eight locations (Hidden Valley, 304th Street, Purdy, Inter-modal Yard, Key Center, Prairie Ridge, Anderson Island, and Sales Road.)

The Employer’s operations are staffed by 12 cashiers, 22 equipment operators, 20 laborers, 5 office staff employees, and 7 mechanics. The instant petition only concerns the seven mechanics. The 12 cashiers are represented by the Teamsters while the operators are represented by the Operating Engineers.⁵ The laborers, office staff, and mechanics are currently unrepresented.

Greg Burrington is the Operations Manager for all of the Employer’s locations, with the exception of 304th Street location where Jim Crandall is the Operations Manager.⁶ Crandall and Burrington report to John Rodgers, who is the Employer’s

³ Closed landfills are monitored and/or operated by the Employer on behalf of the local government for disposal of water from the landfills into sewage systems.

⁴ The Employer serves both retail and commercial customers.

⁵ While it is not abundantly clear in the record, the Petitioner apparently represents some or all of the Employer’s operators.

⁶ Burrington was the sole witness to testify at the hearing in this matter.

District Manager. Rodgers reports to Vice President Eddie Moreland and Treasurer Norman Le May.

B. Community of Interest Factors

1. Work Locations

The Employer employs seven mechanics including Brain. Brain and three other mechanics (Joe Dungan, Landy Green, and Daniel Carpenter) work out of the Hidden Valley location. Mechanics Don Warnken and Edward Hart work out of the 304th Street location while Robert Day is the sole mechanic working out of the Purdy location.

The Hidden Valley site is located at 17925 Meridian Street East in Puyallup, Washington. At that location, the Employer operates a shop with three bays where the mechanics meet each morning to discuss that day's work and where they work on the Employer's equipment utilized in its operations.⁷ That equipment includes loaders, excavators, grinders, conveyor systems, screen plant, sweepers, bobcats, grizzly's, trailers, and Amfab.⁸ Relative to the Employer's other operations, Hidden Valley is large in terms of size (100+ acres) and operations, of which the latter includes a closed landfill, a compost factory, recycling center, a power generating system (referred to as PERC), and a transfer station.⁹ Mechanical work performed at Hidden Valley tends to be greater in terms of quantity and complexity due to the nature and extent of the Hidden Valley operations. Also, the shop at Hidden Valley allows mechanics to work on equipment utilized at other locations. For example, the row turner ("scat") or its parts have been brought from Purdy to Hidden Valley for work by mechanics.¹⁰ The Hidden Valley mechanics often eat lunch together in the lunchroom located at that site.¹¹ Hidden Valley's operations are open 7-days a week from about 8 a.m. to 6 p.m.

Burrington's office is located in the Employer's administrative offices, which are located at Hidden Valley. Burrington is actually working in and about the Hidden Valley location about 75 percent of his work-time. The administration offices are about 75 feet from the shop, which Burrington visits about three to four times a day. Each visit lasts about 5 to 10 minutes.

The Employer's 304th Street site consists of an open landfill covering about 100 acres.¹² This site also has a shop where mechanics are able to perform maintenance,

⁷ It is unclear from the record whether all seven mechanics daily meet at the Hidden Valley shop or whether only the four mechanics assigned to that location meet in the morning.

⁸ Amfab is a piece of equipment that compresses garbage into bale or cube form.

⁹ Burrington testified that a transfer station operation essentially consists of garbage being dumped on a floor to be later scooped up for placement in a container. A container operation consists of garbage or waste being dumped into a container, which can later be moved or transported.

¹⁰ With regard to this example, Burrington testified that Day and another Hidden Valley mechanic took apart a section of the row turner or scat. That part was then brought to Hidden Valley where it was repaired and then returned to Purdy where Day and a Hidden Valley mechanic put the part back into the scat. A row turner essentially is a large piece of equipment which turns compost for processing.

¹¹ Burrington testified that the Hidden Valley mechanics "normally" do not eat with the Employer's other employees at that site.

¹² Actually the site is about 300 acres, 200 of which is apparently protected wetlands.

service or repairs, which cannot be performed operating out of the mechanics' trucks. At 304th Street, mechanics work on the following equipment: trash compactors, bull dozers, tipper, dump truck, wheel loader, and excavator. Regarding lunch breaks, Burrington was not sure whether mechanics at this location eat lunch with other employees in the site's lunchroom. The 304th Street site is open between the hours of 8 a.m. and 6 p.m., 6-days a week (closed Sundays)

The Employer's Purdy location consists of a closed landfill, transfer station and compost facility and sits on about 60 acres. This is a County owned property that is operated by the Employer. Mechanic Robert Day works out of his truck at this location as Purdy does not have a shop like Hidden Valley or 304th Street. At Purdy, the mechanic works on loaders, a row turner, excavators, grinder, conveyors, a screen plant, sweepers, bobcats, grizzlies,¹³ and trailers. Burrington testified that Day eats lunch with other non-mechanic employees in the Purdy site lunchroom. The Purdy site is open 5-days a week between the hours of 9 a.m. and 4:30 or 5 p.m.¹⁴ When the Purdy site mechanic is on vacation, he is replaced by a mechanic from Hidden Valley.

The record reveals that the distance between the Hidden Valley and 304th Street locations is about 10 miles while the distance between Hidden Valley and Purdy is about 30 to 40 miles.¹⁵ The distance between Purdy and 304th Street sites is about 40 to 50 miles. The Hidden Valley site is the Employer's primary location for parts storage. Consequently, if parts are needed at Purdy, they are sent over from Hidden Valley. The Employer also does not stock certain parts and must either order or pick up the parts from outside sources. Those parts may be picked up by Brain or the other mechanics.

The Employer does not permanently assign mechanics to its five other locations (Inter-modal Yard, Key Center, Prairie Ridge, Anderson Island, Sales Road). However, the record indicates the mechanics do not maintain equipment at Key Center or Anderson Island. The extent of equipment maintained by the Employer's mechanics at the Inter-Modal Yard, Prairie Ridge and Sales Road, is significantly more limited than at Purdy, 304th Street and Hidden Valley.

2. Terms and Conditions of Employment

As noted above, the mechanics service, repair and/or maintain an assortment of equipment. The mechanics' respective experience levels vary as does their pay which falls in a range between \$14 an hour and \$31.14. Robert Day, the Purdy mechanic, makes \$15.97 an hour while two other employees make less than Day.¹⁶ All mechanics are paid bi-monthly and all receive overtime for work in excess of 40 hours a week. Additionally, all mechanics receive the same benefits and are generally subject to the same Employer rules and obligations as set forth in the Employer's "Employee Handbook."¹⁷ The mechanics do not wear uniforms but all do wear overalls.

¹³ A Grizzly is a permanently stationed excavator.

¹⁴ The remaining facilities' days of operations vary from being open 7-days a week to only a day and a half a week.

¹⁵ Burrington testified it take about an hour to drive from Hidden Valley to Purdy.

¹⁶ Burrington testified that "the pay schedule is all based more on experience and qualifications than it is on what they [mechanics] do for us."

¹⁷ Benefits include vacation, holiday and bereavement leave policies.

The mechanics work generally at the site of where the Employer's equipment is being operated. For instance, a Hidden Valley mechanic will travel to the Employer's Inter-modal yard to work on a piece of equipment called a "Top Pick."¹⁸ If a mechanic is away from the shop, they will contact Brain if they need any guidance on their work in the field.¹⁹ If Brain is not available, the mechanics will seek out "Hooter" (unidentified) or Landy Green.

The Employer maintains that Day, the Purdy mechanic lacks the skill of the Hidden Valley mechanics. Day has been employed by the Employer for about 2 years. Consequently, Day receives assistance from Hidden Valley in the form of telephonic directions or guidance in performing his work. If further assistance is required, a Hidden Valley mechanic is sent to Purdy to work side-by-side with Day – this type of assistance appears to occur on a fairly regular basis. Day was transferred from Hidden Valley to Purdy to replace a more experienced mechanic who was needed at Hidden Valley.

C. Lead Mechanic Richard Brain

The record reveals that Brain is the sole lead mechanic employed in the Employer's operations and that he works at and out of the Hidden Valley location. However, the record was not clear regarding the extent and nature of Brain's leadman responsibilities over the mechanics working at and out of the 304th Street and Purdy locations. In any event, Burrington testified that he directly supervises the Hidden Valley and Purdy mechanics, including Brain, while Crandall directly supervises the 304th Street mechanics.

Brain has been employed by the Employer for about 18 years. While the other mechanics' respective hourly wage rates range between \$14 and \$22.87, Brain's wage rate of \$31.14 is significantly higher.²⁰ Burrington testified that Brain's wage differential is based on the latter's vast experience and ability to work on various types of equipment at the site where it is used in the Employer's operations. However, Burrington did not fully elaborate on the experience, abilities, tenure, and/or wage rates of the other mechanics relative to Brain.

Burrington testified that Brain's primary duty is to keep Burrington informed regarding the break-down of equipment, the costs of repairs, and to report other significant employee performance, attendance or work issues to Burrington. However, Burrington also testified that Brain is responsible for scheduling or assigning mechanics' work and that Brain makes recommendations regarding hiring. Additionally, while Burrington testified that Brain does not possess the authority to transfer, Brain did recommend a transfer, which Burrington then made.

¹⁸ A Top Pick is a large forklift with four tires in the front and two in the rear. The tires stand about 6 or 7 feet tall. The Inter-modal Yard is located in the Port of Tacoma behind the Burlington Northern office.

¹⁹ The means of communication (cell phone, radio, etc) is not clear from the record.

²⁰ The record reveals the following wage rates and work locations for the mechanics: 1.) Richard Brain, \$31.14, Hidden Valley; 2.) Robert Day, \$15.97, Purdy; 3.) Joe Dungan, \$15, Hidden Valley; 4.) Landy Green, \$18.74, Hidden Valley; 5.) Don Warnken, \$22.87, 304th Street; 6.) Daniel Carpenter, \$18.00, Hidden Valley; and 7.) Edward Hart, \$14.00, 304th Street.

With respect to scheduling, Brain generally reports to work at about 6 a.m. The other mechanics report in at different times. When Brain gets into work, he will go to the Employer's equipment, start it up, talk to the operators of the equipment and go over a checklist to determine if anything needs attention. The mechanics then meet later in the morning to decide what work will be done. Burrington further testified that when equipment needs a mechanic's attention, it is generally an immediate need and, so, the issue becomes a question of who is available. Calls for such work normally come into Brain and he makes a decision based "somewhat" on expertise and primarily on availability. Because Brain has the most experience, he is best able to discern the nature and extent of work involved and whether it requires his personal attention or whether someone else is able to do the work.

As to hiring, Burrington testified that he makes hiring decisions but he has Brain sit in on interviews. During the interviews, Brain is able to ask questions and, due to his experience, is able to ask pointed mechanical oriented questions.²¹ Burrington testified that if Brain were unavailable, which has not occurred, he would ask Green to sit in on the interviews of mechanics. Burrington testified that he thinks "very highly" of Brain's recommendations relating to the hire of mechanics. Indeed, Burrington has not hired any mechanic whom Brain has rejected for hire; however, Burrington has hired employees into non-mechanic positions against Brain's recommendations.²²

Regarding the transfer recommendation, Brain "suggested" to Burrington that the Employer transfer Robert Day from Hidden Valley to Purdy so as to allow the Purdy mechanic to work out of Hidden Valley. Burrington testified that the "suggestion" made sense and, so, it was made.

Further significant details regarding Brain's transfer and hiring recommendations and his scheduling duties are not present in the record. However, it is clear that Burrington greatly relies on Brain's expertise with regard to the mechanics' work.

D. Two Recent Hires

The Employer recently hired two mechanics, Joe Dungan and Daniel Carpenter, at Hidden Valley following the filing of the instant petition. Dungan replaced mechanic Aaron Headley who was terminated after Dungan's hire due to Headley's attendance and performance problems. Headley was hired within the last year or so. Additionally, Burrington testified that Dungan was hired due to his needed experience working on trailers. Burrington testified that despite a relatively steady workload, the recent hire of Dungan and Carpenter were necessary.

II. ANALYSIS

A. Purdy Mechanic Unit Determination

The Employer and Petitioner agree that the appropriate unit should include, at the very least, mechanics working at Hidden Valley and 304th Street. However, the

²¹ Burrington was not trained as a mechanic and, thus, testified he must rely on Brain's vast mechanical experience when interviewing mechanics.

²² Thus, while not clear, it appears that Brain is involved, to some degree, in the Employer's hiring of employees in non-mechanic positions.

Employer argues that the Purdy mechanic, Robert Day, should be excluded from the unit of mechanics because of the distances between the Purdy, 304th Street, and Hidden Valley facilities; the nature and extent of work and operations at Purdy is different from Hidden Valley and 304th Street; and because the Purdy mechanic works alone while the other two sites are staffed by two or more mechanics. To the contrary, Petitioner argues that the Purdy mechanic should be included in the unit.

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986); *Alamo Rent-A-Car*, 330 NLRB 897 (2000).

The record reveals that the skills and duties of the Purdy mechanic, Robert Day, are substantially similar to those of the other mechanics. In particular, Day works on some of same equipment as the other mechanics in the unit. While the Employer contends that Day is less experienced than the other mechanics in the unit, he apparently is more experienced than two other mechanics who receive lower pay than Day, as pay is based largely on experience and qualifications according to Burrington.

Regarding terms and conditions of employment, Day, like the other mechanics in the unit, works primarily out of a truck and drives to where the equipment is located to perform his work. As noted above, Day works on some of the very same equipment as other unit employees. He wears overalls as do the rest of his co-mechanics and he receives the same benefits and has the same rights and obligations as other mechanics as set forth in the Employer's Handbook. Thus, Day's terms and conditions of employment are substantially similar to unit employees.

With respect to employee interchange, the record reveals that Day was a recent transfer to the Purdy site from Hidden Valley and that Day replaced a mechanic who was transferred to Hidden Valley. Moreover, while Day is absent from work, he is generally replaced by a Hidden Valley mechanic. The Employer does not dispute that Day often must work side-by-side with mechanics from Hidden Valley due to Day's relative lack of experience. Thus, Day has significant contact with his Hidden Valley co-mechanics.

On the topic of functional integration, the record reveals that Day will often remove parts at Purdy, which parts are subsequently repaired by Hidden Valley mechanics, for later installation by Day back at Purdy. Thus, work at Purdy and Hidden Valley turns on the functional integration of Day into the Employer's operations.

As to the factor of centralized control of management and supervision, Burrington testified that he directly and commonly supervises both Day at Purdy and the Hidden Valley mechanics.

Regarding bargaining history, the record reveals no history concerning the mechanics. Moreover, no other labor organization seeks to represent a unit of mechanics different from that sought by Petitioner.

The Employer cites two cases in support of its position on the issue of appropriate unit. The first case, *Carter Hawley Hale Stores, Inc.*, 273 NLRB 621 (1982)

is distinguishable because in that case the Employer found single locations appropriate where employee benefits were significantly different among the locations, supervision was not common, and the distance between some locations was up to 170 miles. Here Day and unit employees share the same benefits, Day and Hidden Valley mechanics share common supervision, and the distance between Purdy and Hidden Valley is significantly shorter (about 40 miles) than the 170 miles in *Carter Hawley Stores*.²³ The second case, *Checker Cab Company*, 260 NLRB 955 (1982) is similarly distinguishable as there the distance between locations was 85 miles, there was little interchange and working conditions were dissimilar – these facts are not present here.

Accordingly, I find that a unit composed of all full-time and regular part-time mechanics employed by the Employer is an appropriate unit for purposes of collective-bargaining. *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (2004); *Alamo Rent-A-Car*, supra.

B. Brain's Supervisory Status

Petitioner contends that Brain is a supervisor and should be excluded from the unit while the Employer argues Brain does not possess indicia of supervisory status and should be included in the unit as mechanic.

Section 2(3) of the Act excludes from the definition of "employee" "any individual employed as a supervisor." Section 2(11) defines supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be interpreted in the disjunctive and "the possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class." *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with "genuine management prerogatives," and "straw bosses, lead men, and set-up men" who are protected by the Act even though they perform "minor supervisory duties." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974) (quoting S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)). Senate Rep. No. 105 also stated that the committee took "great care" that employees excluded from the coverage of the Act "be truly supervisory" and that the amendment exclude only "the supervisor vested with such management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such actions." NLRB, Legislative History of the Labor Management Relations Act of 1947, 410. "Responsibly to direct" was added to the Senate bill shortly before its enactment by Senator Flanders, who explained that it was added to include "essential

²³

I also note that, despite the distance, a significant amount of contact occurs between Day at Purdy and his co-mechanics at Hidden Valley.

managerial duties" not otherwise covered by the other indicia. Leg. Hist. at 1303. *Providence Hosp.*, 320 NLRB 717, 725, (1996). The burden of proving a worker is a supervisor within the meaning of Section 2(11) of the Act falls on the party who would remove the worker from the class of workers protected by the Act. *Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). Here, the record raises substantial issues concerning Brain's authority to schedule or assign employees, to reject mechanics for hire and to recommend the transfer of mechanics.

With regard to scheduling, Burrington's testimony did not provide concrete evidence elaborating on the independent judgment that Brain exercises with regard to assigning work to mechanics.²⁴ While Burrington testified that Brain bases assignments "somewhat" on expertise, the record was not fleshed out in this regard. For instance, what are employees' respective areas of expertise; how does this play out for work performed at Hidden Valley where only three other mechanics work along with Brain; and what authority, if any at all, does Brain have over the assignment of work at 304th Street or at Purdy? The record does not answer these critical questions.

As to Brain's authority to reject employees for hire, Burrington testified that he has not hired a mechanic applicant whom Brain has rejected and that Burrington places great reliance on Brain due to Burrington's relative lack of knowledge of the mechanics' work and Brain's significant experience in such matters. However, it is not clear from the record whether the Employer has vested Brain with the authority to veto the hiring of a mechanic or whether it was mere coincidence that Burrington and Brain have agreed to reject certain mechanic applicants for hire.²⁵ It is also unclear whether Burrington seeks Brain's recommendation solely with regard to the mechanical qualifications of applicants or whether Brain's recommendation is more extensive. In this regard, I note that Burrington testified that he will hire a person into a non-mechanic position despite Brain's recommendation to the contrary. In sum, it is clear that Brain's recommendations bear some influence on Burrington's decision to hire but the extent is not known.

As with hiring recommendations, the circumstances underlying Brain's transfer recommendation are lacking in critical detail. In short, the record does provide a sufficient basis on which to conclude whether Brain's transfer recommendation was effective and/or whether this was an isolated event.²⁶

²⁴ Proof of independent judgment in the assignment or direction of employees entails the submission of concrete evidence showing how such decisions are made. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999); *Franklin Home Health Agency*, 337 NLRB 826 (2002).

²⁵ However, the Board has consistently found that such an assessment of an applicant's technical ability to perform the required work does not constitute an effective recommendation to hire. *Hogan Mfg., Inc.*, 305 NLRB 806 (1991); *The Door*, 297 NLRB 601 (1990); *Plumbers Local 195 (Jefferson Chemical Co.)*, 237 NLRB 1099, 1102 (1978); *GRB Entertainment, Inc. d/b/a Aardvark Post*, 331 NLRB 320 (2000).

²⁶ Authority to effectively recommend generally means that the recommended action is taken without any independent investigation by higher authority, not simply that the recommendation is ultimately followed. *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Company*, 186 NLRB 1 (1970). Isolated hiring by alleged supervisor does not constitute supervisory authority. *Kenosha News Publishing Corp.*, 264 NLRB 270 (1982).

Under these circumstances and in view of the record as a whole, I am unable to resolve the issue of Brain's alleged supervisory status.²⁷ Accordingly, I shall permit Brain to vote subject to challenge.

C. Two Recent Hires

Petitioner seeks to exclude two mechanics (Dungan and Carpenter) hired subsequent to the filing of the petition because the Employer hired those two in an effort "to pad the number of employees eligible to vote for Union Representation." The Employer did not take a position on this matter in its brief although I note, at the hearing, the Employer did object to Petitioner's line of questioning underlying its position in this regard.

Petitioner bases its position on Burrington's testimony that the workload, at all times relevant herein, has been steady and on the timing of the hires in relation to the filing of the petition. The general rule is that the Board will not permit the litigation of unfair labor practices in representation proceedings. *Times Square Stores Corp.*, 79 NLRB 361 (1948). See also *Texas Meat Packers*, 130 NLRB 279 (1961); *Cooper Supply Co.*, 120 NLRB 1023 (1958); and *Capitol Records*, 118 NLRB 598 (1957). Here, Petitioner seeks to raise issues that should properly be raised by way of a timely filed unfair labor practice charge, objections to the conduct of an election, and/or by way of timely challenges to Dungan or Carpenter's voting in the election directed below.²⁸

In sum, the only limits that I shall place on the voting eligibility of Dungan and Carpenter, by way of this Decision and Direction of Election, shall be those eligibility requirements that are set forth below in the Direction of Election and that are applicable to all mechanics in the unit found appropriate.

III. CONCLUSION

In light of the above and the record as a whole, I shall direct an election in the following appropriate unit (hereinafter "Unit"):

All full-time and part-time mechanics employed at or working out of the Employer's operations located in and about Pierce County, Washington, including the Employer's operations at its Hidden Valley, 304th Street Landfill, Purdy Transfer Station, Inter-modal Yard, Prairie Ridge, and Sales Road locations; excluding office clerical employees, guards and supervisors as defined in the Act.²⁹

There are approximately seven employees in the Unit.

²⁷ In this regard, I note that the Employer has failed to adequately explain the significantly larger wage rate received by Brain relative to the balance of the mechanics.

²⁸ See the following cases regarding unfair labor practices and objections involving allegations that an employer padded a unit: *Gourmet Foods*, 270 NLRB 578, 604 (1984); *Value City Furniture of Springdale, Inc.*, 222 NLRB 455 (1976); and *Maxi Mart*, 246 NLRB 1151 (1979).

²⁹ At the hearing, Petitioner stated its willingness to participate in an election in a unit deemed appropriate by the Regional Director. Petitioner's showing of interest on file is currently sufficient to proceed to an election in the Unit found appropriate.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local 612, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director of Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, **on or before February 1, 2005**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206)220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5

full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 8, 2005**.

DATED at Seattle, Washington, this **25th day of January 2005**.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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